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Mary L. Brown
Director
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July 25,1996

William S. Caton
Acting Secretary
Federal Communications Commission
1919 M St. NW
Washington, D.C. 20554

Re: EX PARTE in Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98

Dear Mr. Caton:

Attached are talking points provided to FCC staff by MCI today. The attached material was provided to John Nakahata, Lauren "Pete" Belvin, James Casserly, and Dan Gonzalez, and is being filed at the request of Commissioner Ness.

Sincerely,

Mary L Brown

Mary L. Brown

cc: Gina Keeney
Richard Metzger
Richard Welch

Bridging the "Gap" Between 251 and Universal Service Decisions

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- ILECs have raised the specter of access revenue erosion if the FCC adopts a 251 decision allowing new entrants to purchase unbundled elements at cost for the purpose of providing both exchange service and exchange access.

- ILECs complain that this revenue erosion puts pressure on universal service obligations that they face.

- In response to these arguments, the FCC is considering applying access charges (CCL & TIC) or some portion thereof to the use of unbundled elements (where the new entrant is using the ILEC switch) for exchange access until such time as the Joint Board and FCC resolve the universal service issues next spring.

- The FCC cannot find that access charges are required during this interim period to support universal service:

  - The statutory definition of "cost" does not support application of access charges,

  - There is no record evidence to make an affirmative finding that access charges support universal service; no one has come forward with credible numbers to suggest any shortfall in universal service support, and MCI believes there is no chance that a shortfall will materialize,

  - The purpose of the Act is to introduce competition for the provision of access, and the application of access charges on top of unbundled element prices stalls competition ,

  - Unbundled element prices at economic cost fully recover the ILEC's costs (including a reasonable profit), and applying access charges on top of those prices represents a double recovery.

- To the extent the FCC believes there is a possibility that access charges fund universal service obligations, it should consider creating a mechanism that does not pre-judge the outcome of its universal service proceeding.

- Therefore, should the FCC conclude that any funds, in addition to the costs of the unbundled elements themselves, should be collected for the purpose of universal service pending issuance of rules in the pending universal service docket, the FCC should:

  - Require in the 251 order that ILECs create an escrow account representing the payments described below, with funds paid out of that account solely for the purpose of meeting universal service obligations, as specified by the Commission in a future order,

- Limit payment into the escrow to those funds required for maintenance of universal service obligations and levy them as an interim charge that is instituted, out of an abundance of caution, to ensure that universal service obligations are funded in the period between completion of arbitrations or negotiations and a final order in the universal service docket. One such proposal that meets these criteria has been made by the Competitive Policy Institute.

State Decisions

- Several states have used escrow arrangements to resolve interim interconnection pricing issues pending final or permanent pricing decisions.
- Pennsylvania approved an escrow account that was proposed by Bell Atlantic and MCImetro to resolve interim interconnection charges, pending final resolution of the Pennsylvania Commission's decision on interconnection.
- A similar agreement was entered into for Wisconsin between Ameritech and MCImetro that does not require state commission approval.

Implementation issues

Require escrow fund to be established by the ILEC within 10 days of the initiation of service to a new entrant using unbundled elements.

In a future order, the Commission would establish the procedures and conditions by which an ILEC would be permitted to withdraw escrow funds for the purpose of supporting universal service obligations. For example, if the CPI proposal were adopted, the Commission could order a simplified, certification process to permit expeditious withdrawal and use of the funds.

One escrow fund per ILEC can be established, provided that the ILEC keeps a record of the payments into the fund by each new entrant and minutes of use by new entrant. Pursuant to Section 4(i) of the Communications Act of 1934 and Section 274(k) of the Telecommunications Act of 1996, the incumbent LECs shall keep accurate account of all earnings, costs, and returns associated with the rates that are the subject of this escrow, and of all amounts paid thereunder and by whom such amounts are paid.

The purpose of the fund is to collect charges that are paid in addition to unbundled element charges when a new entrant is provisioning a customer from ILEC unbundled elements (except when providing its own switch)

Payments to the fund shall terminate by Commission order, the effective date of the order in the pending universal service docket, or June 30, 1997, whichever is earlier.